IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

SHANNON PEREZ, *et al.*, *Plaintiffs,* v. STATE OF TEXAS, *et al.*, *Defendants.*	CIVIL ACTION NO. SA-11-CA-360-OLG-JES-XR [Lead case]

DEFENDANTS' ADVISORY REGARDING HD90

Defendants the State of Texas, Greg Abbott, in his official capacity as Governor, and Rolando B. Pablos, in his official capacity as Secretary of State, file this Advisory in response to the Court's Order of July 3, 2017, ECF No. 1586.

The Court's Order directed the parties to advise the Court whether there is agreement on what remedy, if any, should be ordered for HD90 and adjoining districts and if not, what the nature of the disagreement is. The parties have not reached an agreement on the threshold question of whether a remedy should be ordered for HD90 at all. Similarly, the parties have reached no agreement regarding the geographic areas that should be addressed in the event the Court were to require a remedy.

The Supreme Court affirmed this Court's finding that HD90 amounted to a racial gerrymander because the State failed to carry its burden to prove that consideration of racial data to maintain a 50% SSVR majority was narrowly tailored to achieve a

compelling governmental interest. *See Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018); *Perez v. Abbott*, 267 F. Supp. 3d 750, 794 (W.D. Tex. 2017). The Supreme Court made clear that a legislative group's request to bring the Latino population back over 50% was insufficient to carry that burden. *Abbott v. Perez*, 138 S. Ct. at 2335. Instead, the Supreme Court explained, a State must make "a strong showing of a pre-enactment analysis with justifiable conclusions." *Id.* Specifically, the use of race must be supported by election analysis; that analysis must have been considered by the Legislature; and that analysis must indicate that the failure to consider racial data could lead to liability for vote dilution under § 2 of the Voting Rights Act. *Id.* at 2334-35. Because the State failed to carry that burden here, the Supreme Court remanded for this Court "to consider what if any remedy is appropriate at this time." *Id.* at 2335.

Defendants respectfully submit that no remedy is necessary in HD90. First, there is no question that the current district provides Hispanic voters with the opportunity to elect their candidate of choice. Representative Ramon Romero has been elected to represent HD90 twice, in 2014 and 2016, and he does not face a challenger in the 2018 election.[1] Second, there is no evidence of discriminatory intent: "The Legislature adopted changes to HD90 at the behest of *minority groups*, not out of a desire to discriminate." *Abbott v. Perez*, 138 S. Ct. at 2329 n.24. Finally, a redrawn HD90 would

[1] *See, e.g.*, https://apps.texastribune.org/elections/2018/primary-election-results/ (indicating no Republican primary candidates in HD90).

be in effect only in 2020. Given the proven ability of Hispanic voters to elect their candidate of choice in HD90, together with the lack of discriminatory intent, the substantial interests of maintaining existing opportunity to elect and avoiding voter confusion outweigh the need to redraw HD90 for a single election.

Defendants understand that the Task Force intends to propose that the Court return HD90 to its configuration under Plans H283 and H309. Among other changes, this would remove the Como neighborhood from HD90 and place it in HD99. To the extent the proposed remedy would remove Como from HD90, it goes further than necessary to remedy the violation because the Legislature's decision to return Como to HD90 was not a race-based decision and therefore not part of the violation. As this Court found, the decision to return Como to HD90 "was simply meant to bring Como back to its long-held place in HD90, where its constituents wanted to be." *Perez v. Abbott*, 267 F. Supp. 3d at 794. The finding of a *Shaw* violation rested "on changes made to HD90 after Como was moved back into HD90." *Id.*; *see also id.* at 792 (finding racial motivation behind "changes made between Plan H328 and Plan H342"). The State contends no remedy is necessary in HD90. However, in the event the Court were to find that a remedy is required, any remedy should be limited to the district boundaries that resulted from the unjustified consideration of race. *See, e.g.*, *John Doe #1 v. Veneman*, 380 F.3d 807, 818 (5th Cir. 2004) (explaining that courts "must narrowly tailor an injunction to remedy the specific action which gives rise to the order"); *see also Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (holding that "the scope of injunctive relief is

dictated by the extent of the violation established"). Here, to the extent the Court determines that HD90 requires a remedy, that remedy should focus on the specific changes made after Como was returned to the district.

CONCLUSION

For the reasons stated above, no remedy is necessary in HD90.

Date: August 6, 2018

Respectfully submitted.

/s/ Patrick K. Sweeten

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY D. STARR
Deputy First Assistant
Attorney General

JAMES E. DAVIS
Deputy Attorney General
for Litigation

PATRICK K. SWEETEN
Senior Counsel for Civil Litigation

MATTHEW H. FREDERICK
Deputy Solicitor General

ANGELA V. COLMENERO
Chief, General Litigation Division

TODD LAWRENCE DISHER
Special Counsel for Civil Litigation

ADAM N. BITTER
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 463-4139
Fax: (512) 474-2697

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing was sent on August 6, 2018, via the Court's electronic notification system and/or email to the following counsel of record:

DAVID RICHARDS
Richards, Rodriguez & Skeith LLP
816 Congress Avenue, Suite 1200
Austin, TX 78701
512-476-0005
davidr@rrsfirm.com

RICHARD E. GRAY, III
Gray & Becker, P.C.
900 West Avenue, Suite 300
Austin, TX 78701
512-482-0061/512-482-0924 (facsimile)
Rick.gray@graybecker.com
ATTORNEYS FOR PLAINTIFFS PEREZ, DUTTON, TAMEZ, HALL, ORTIZ, SALINAS, DEBOSE, and RODRIGUEZ

JOSE GARZA
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, Texas 78209
210-392-2856
garzpalm@aol.com

MARK W. KIEHNE
RICARDO G. CEDILLO
Davis, Cedillo & Mendoza
McCombs Plaza
755 Mulberry Ave., Ste. 500
San Antonio, TX 78212
210-822-6666/210-822-1151 (facsimile)
mkiehne@lawdcm.com
rcedillo@lawdcm.com

JOAQUIN G. AVILA
P.O. Box 33687
Seattle, WA 98133
206-724-3731/206-398-4261 (facsimile)
jgavotingrights@gmail.com
ATTORNEYS FOR MEXICAN AMERICAN LEGISLATIVE CAUCUS

GERALD H. GOLDSTEIN
DONALD H. FLANARY, III
Goldstein, Goldstein and Hilley
310 S. St. Mary's Street
San Antonio, TX 78205-4605
210-226-1463/210-226-8367 (facsimile)
ggandh@aol.com
donflanary@hotmail.com

PAUL M. SMITH, MICHAEL B. DESANCTIS, JESSICA RING AMUNSON
Jenner & Block LLP
1099 New York Ave., NW
Washington, D.C. 20001
202-639-6000

J. GERALD HEBERT
191 Somervelle Street, # 405
Alexandria, VA 22304
703-628-4673
hebert@voterlaw.com

JESSE GAINES
P.O. Box 50093
Fort Worth, TX 76105
817-714-9988
gainesjesse@ymail.com
ATTORNEYS FOR PLAINTIFFS QUESADA, MUNOZ, VEASEY, HAMILTON, KING and JENKINS

LUIS ROBERTO VERA, JR.
Law Offices of Luis Roberto Vera, Jr.
1325 Riverview Towers
San Antonio, Texas 78205-2260
210-225-3300
lrvlaw@sbcglobal.net

NINA PERALES
MARISA BONO
Mexican American Legal Defense
and Education Fund
110 Broadway, Suite 300
San Antonio, TX 78205
210-224-5476/210-224-5382 (facsimile)
nperales@maldef.org
mbono@maldef.org

MARK ANTHONY SANCHEZ
ROBERT W. WILSON
Gale, Wilson & Sanchez, PLLC
115 East Travis Street, Ste. 1900
San Antonio, TX 78205
210-222-8899/210-222-9526 (facsimile)
masanchez@gws-law.com
rwwilson@gws-law.com
ATTORNEYS FOR TEXAS LATINO REDISTRICTING TASK FORCE, CARDENAS, JIMENEZ, MENENDEZ, TOMACITA AND JOSE OLIVARES, ALEJANDRO AND REBECCA ORTIZ

JOHN T. MORRIS
5703 Caldicote St.
Humble, TX 77346
281-852-6388
johnmorris1939@hotmail.com
JOHN T. MORRIS, PRO SE

MAX RENEA HICKS
Law Office of Max Renea Hicks
101 West Sixth Street Suite 504
Austin, TX 78701
512-480-8231/512/480-9105 (facsimile)
ATTORNEY FOR PLAINTIFFS CITY OF AUSTIN, TRAVIS COUNTY, ALEX SERNA, BEATRICE SALOMA, BETTY F. LOPEZ, CONSTABLE BRUCE ELFANT, DAVID GONZALEZ, EDDIE RODRIGUEZ, MILTON GERARD WASHINGTON, and SANDRA SERNA

GEORGE JOSEPH KORBEL
Texas Rio Grande Legal Aid, Inc.
1111 North Main
San Antonio, TX 78213
210-212-3600
korbellaw@hotmail.com
ATTORNEYS FOR INTERVENOR-PLAINTIFF LEAGUE OF UNITED LATIN AMERICAN CITIZENS

ROLANDO L. RIOS
Law Offices of Rolando L. Rios
115 E Travis Street, Suite 1645
San Antonio, TX 78205
210-222-2102
rrios@rolandorioslaw.com
ATTORNEY FOR INTERVENOR-PLAINTIFF HENRY CUELLAR

GARY L. BLEDSOE
Law Office of Gary L. Bledsoe
316 W. 12th Street, Ste. 307
Austin, TX 78701
512-322-9992/512-322-0840 (facsimile)
garybledsoe@sbcglobal.net
ATTORNEY FOR INTERVENOR-PLAINTIFFS TEXAS STATE CONFERENCE OF NAACP BRANCHES, TEXAS LEGISLATIVE BLACK CAUCUS, EDDIE BERNICE JOHNSON, SHEILA JACKSON-LEE, ALEXANDER GREEN, HOWARD JEFFERSON, BILL LAWSON, and JUANITA WALLACE

VICTOR L. GOODE
Asst. Gen. Counsel, NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-5120
410-580-5120/410-358-9359 (facsimile)
vgoode@naacpnet.org
ATTORNEY FOR TEXAS STATE CONFERENCE OF NAACP BRANCHES

STEPHEN E. MCCONNICO
SAM JOHNSON
S. ABRAHAM KUCZAJ, III
Scott, Douglass & McConnico
One American Center
600 Congress Ave., 15th Floor
Austin, TX 78701
512-495-6300/512-474-0731 (facsimile)
smcconnico@scottdoug.com
sjohnson@scottdoug.com
akuczaj@scottdoug.com
ATTORNEYS FOR PLAINTIFFS CITY OF AUSTIN, TRAVIS COUNTY, ALEX SERNA, BALAKUMAR PANDIAN, BEATRICE SALOMA, BETTY F. LOPEZ, CONSTABLE BRUCE ELFANT, DAVID GONZALEZ, EDDIE RODRIGUEZ, ELIZA ALVARADO, JOSEY MARTINEZ, JUANITA VALDEZ-COX, LIONOR SOROLA-POHLMAN, MILTON GERARD WASHINGTON, NINA JO BAKER, and SANDRA SERNA

KAREN M. KENNARD
2803 Clearview Drive
Austin, TX 78703
(512) 974-2177/512-974-2894 (facsimile)
karen.kennard@ci.austin.tx.us
ATTORNEY FOR PLAINTIFF CITY OF AUSTIN

DAVID ESCAMILLA
Travis County Asst. Attorney
P.O. Box 1748
Austin, TX 78767
(512) 854-9416
david.escamilla@co.travis.tx.us
ATTORNEY FOR PLAINTIFF TRAVIS COUNTY

ROBERT NOTZON
1507 Nueces Street
Austin, TX 78701
512-474-7563/512-474-9489 (facsimile)
robert@notzonlaw.com

ALLISON JEAN RIGGS
ANITA SUE EARLS
Southern Coalition for Social Justice
1415 West Highway 54, Ste. 101
Durham, NC 27707
919-323-3380/919-323-3942 (facsimile)
anita@southerncoalition.org
ATTORNEYS FOR TEXAS STATE CONFERENCE OF NAACP BRANCHES, EARLS, LAWSON, WALLACE, and JEFFERSON

DONNA GARCIA DAVIDSON
PO Box 12131
Austin, TX 78711
512-775-7625/877-200-6001 (facsimile)
donna@dgdlawfirm.com
ATTORNEY FOR DEFENDANT STEVE MUNISTERI

CHAD W. DUNN
K. SCOTT BRAZIL
Brazil & Dunn
4201 FM 1960 West, Suite 530
Houston, TX 77068
281-580-6310/281-580-6362 (facsimile)
chad@brazilanddunn.com
scott@brazilanddunn.com
ATTORNEYS FOR INTERVENOR-DEFS TEXAS DEMOCRATIC PARTY and BOYD RICHIE

JOHN M. GORE
TIMOTHY F. MELLETT
DANIEL J. FREEMAN
JAYE ALLISON SITTON
U.S. Department of Justice
Civil Rights Division, Voting Rights
Room 7254 NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 305-4355; (202) 305-4143
ATTORNEYS FOR THE UNITED STATES

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN